

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TERWIN WAREHOUSE MANAGEMENT : 07 Civ. 5632 (LTS) (MHD)
LLC, as Program Administrator for and :
Assignee of TERWIN MORTGAGE :
WAREHOUSE TRUST II, SERIES XVI, and :
TERWIN ADVISORS LLC, :

Plaintiffs, :

-against- :

SPECTRUM FINANCIAL GROUP, INC., :
JERRY CRAIG, SR. and :
JERRY CRAIG, JR., :

Defendants. :

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**REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF
MOTION TO WITHDRAW AS DEFENDANTS' COUNSEL**

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Attorneys for Defendants

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JERRY CRAIG, SR. and	:	
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Ingram Yuzek Gainen Carroll & Bertolotti, LLP ("Ingram Yuzek" or the "firm"), attorneys for all defendants in this action, respectfully submits this memorandum in reply to plaintiffs' "partial opposition" to the firm's motion, made at defendants' request, to be relieved as defendants' counsel.

The corporate defendant, Spectrum Financial Group, Inc., has filed for bankruptcy protection, and plaintiffs' claims against it are, therefore, stayed. The individual defendants, the Craigs, have stated unequivocally that they cannot and will not meet financial obligations to the firm. Non-payment of fees is a valid basis to relieve counsel.¹ The courts in this district have

¹ See, e.g., *Fischer v. Biman Bangladesh Airlines*, No. 96 Civ. 3120, 1997 WL 411446, at *1 (S.D.N.Y. Jul 18, 1997), citing cases; *Beshansky v. First Nat. Entertainment Corp.*, 140 F.R.D. 272, 274 (S.D.N.Y. 1990).

reaffirmed this principle repeatedly, particularly where discovery is in its early stages.² Here, discovery has not even started.

Plaintiffs want the Court to impose as a condition of the firm's withdrawal either the appearance of new counsel or the Craigs' appearance *pro se*. There is no basis, however, to disregard the clear authority that supports the present motion and to impose on Ingram Yuzek the obligation to make the Craigs work on the pre-trial order.

We do not suggest that the Court may not impose a condition on withdrawal. Instead, we submit that the condition that plaintiffs seek -- the appearance of new counsel or the Craigs' active participation in the proceedings -- is neither justified under the law nor fair. The condition in *Beshansky*, cited above, was that the counsel had to transmit to the clients an order from the Court stating that failure to comply with disclosure and discovery obligations could result in the entry of a default judgment. Once that order was transmitted, the withdrawal was effective. Counsel did not have to ensure compliance with outstanding discovery to be allowed to withdraw. We request that the Court here issue a similar order, and not the conditions plaintiffs seek.

² *Brown v. National Survival Games, Inc.*, No. 91- CV-221, 1994 WL 660533, at *3 (N.D.N.Y. Nov.18, 1994) (as discovery was "not complete and the case [was] not presently scheduled for trial," allowing withdrawal will not cause "undue delay").

CONCLUSION

For the reasons stated above and in the moving papers, it is respectfully requested that the Court grant this motion to relieve Ingram Yuzek as defendants' counsel in this action.

Dated: New York, New York
October 10, 2007

Respectfully submitted,

**INGRAM YUZEK GAINEN CARROLL
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